

# PATENT COOPERATION TREATY


# PCT

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY PCT

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

REC'D 03 MAR 2006

Applicant's or agent's file reference	<b>FOR FURTHER ACTION</b>		See Form PCT/PEA/416
International application No. PCT/EP2005/000117	International filing date (day/month/year) 06.01.2005	Priority date (day/month/year) 30.01.2004	
International Patent Classification (IPC) or national classification and IPC A23L1/30, A23C11/00, A23L1/39, A23L1/19, A23L2/39, A23F3/00, A23F5/00, A23G1/00			
Applicant UNILEVER N.V. et al.			
1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36. 2. This REPORT consists of a total of 4 sheets, including this cover sheet. 3. This report is also accompanied by ANNEXES, comprising: a. <input type="checkbox"/> sent to the applicant and to the International Bureau) a total of sheets, as follows: <input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions). <input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box. b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).			
4. This report contains indications relating to the following items: <input checked="" type="checkbox"/> Box No. I Basis of the opinion <input type="checkbox"/> Box No. II Priority <input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability <input type="checkbox"/> Box No. IV Lack of unity of invention <input type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement <input checked="" type="checkbox"/> Box No. VI Certain documents cited <input type="checkbox"/> Box No. VII Certain defects in the international application <input type="checkbox"/> Box No. VIII Certain observations on the international application			
Date of submission of the demand  30.06.2005		Date of completion of this report  02.03.2006	
Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465		Authorized Officer  Vernier, F  Telephone No. +49 89 2399-	



**INTERNATIONAL PRELIMINARY REPORT  
ON PATENTABILITY**

International application No.  
PCT/EP2005/000117

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**Box No. I Basis of the report**

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1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language , which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1(b))
  - ☐ publication of the international application (under Rule 12.4)
  - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements\*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report):*

**Description, Pages**

1-16 as originally filed

**Claims, Numbers**

1-19 as originally filed

- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages
  - ☐ the claims, Nos.
  - ☐ the drawings, sheets/figs
  - ☐ the sequence listing (*specify*):
  - ☐ any table(s) related to sequence listing (*specify*):
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages
  - ☐ the claims, Nos.
  - ☐ the drawings, sheets/figs
  - ☐ the sequence listing (*specify*):
  - ☐ any table(s) related to sequence listing (*specify*):

\* If item 4 applies, some or all of these sheets may be marked "superseded."

**INTERNATIONAL PRELIMINARY REPORT  
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**Box No. VI    Certain documents cited**

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1. Certain published documents (Rule 70.10)  
and /or
2. Non-written disclosures (Rule 70.9)  
**see separate sheet**

**INTERNATIONAL PRELIMINARY  
REPORT ON PATENTABILITY  
(SEPARATE SHEET)**

International application No.

PCT/EP2005/000117

**Item V**

1. The following documents are considered:

D1: WO 98/58554 A  
D2: US-A-6 129 944  
D3: WO 02/17892 A  
D4: US-A-3 881 005  
D5: WO 2004/014141 A  
D6: EP-A-1 419 698  
D7: EP-A-0 897 671  
D8: DATABASE WPI Section Ch, Week 198123 Derwent Publications Ltd., London, GB; Class D13, AN 1981-41212D XP002285302 & JP 56 042546 A (NISSHIN OIL MILLS LTD) 20 April 1981 (1981-04-20)  
D9: US-B-6 491 9521  
D10: WO 00/33669 A  
D11: EP-A-1 212 945

2. Present independant claims 1 and 11 do not meet the requirements of novelty (Article 33(2) PCT) in the light of D1-D4 (see passages cited in the search report), which disclose phytosterols in particulate form, as well as compositions comprising 10-100% of particulate. Furthermore, present independant claim 17 is not novel in the light of D3, which discloses the process of preparing an emulsion and drying it. None of the cited documents disclose the composition according to present claim 13 (2-50 % salt and 0.1-65% particulate, all other components being optional) or present independant claim 15 (0.5-80% of a tea, coffee, beverage powder with 1-75% of particulate) or present independant claim 19 (soup or soup concentrate comprising 0.1-65% of particulate).
3. With respect to present independant claims 1, 11 and 17, discussion of the question whether the claimed subject-matter involves an inventive step is only of relevance once novelty has been established. Furthermore, it seems that the subject-matter of present independant claims 13, 15 and 19 does not involve an inventive step, as it is not related to any unexpected technical effect. Adding phytosterols to a food product in general and to a soup or a beverage in particular is well known to the skilled person.